

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. Moreover, Applicants affirm the election of claims 1-14 which are drawn to a pressurized beverage product. Applicants respectfully submit that review of all claims of record can be made without serious burden to the Examiner. Furthermore, Applicants will consider cancellation of claims 15-21 upon receipt of a favorable action for claims 1-14.

I. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 2, 5, 6, 8 and 11-14 under 35 USC §102(b) as being anticipated by Fox et al., U.S. Patent No. 2,977,231 (hereinafter '231). In the rejections, the Examiner mentions, in summary, that the '231 reference shows a bottle with a valve that is suitable to dispense a fluid into a consumer's mouth as evidenced by Figure 1. As to claim 14, the Examiner believes that Applicant's disclosure does not define smooth and silky per se and that the '231 reference must have a composition that is smooth and silky since nitrogen, nitrous oxide and other propellants are mentioned in the same.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As set forth in independent claim 1, a pressurized beverage product comprising:

- (a) a beverage within a pressure resistant container, the beverage comprising a soluble gas, sparingly soluble gas or mixtures of gases dissolved therein; and
- (b) a valve in a position to seal the container, the valve when open suitable to dispense the beverage as an effervescent beverage directly into a mouth of a consumer

wherein internally the container has a headspace pressurized to less than about 25 bar, gauge, with a soluble gas, sparingly soluble gas, or mixture of gases and further wherein the container does not comprise an expandable bag.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the gases employed, pressure, the type of drink, the fact that the beverage is liquid continuous, the fact that the beverage is water continuous, the amount of beverage in the container and that the beverage is smooth and silky upon consumption.

In contrast, the '231 reference is directed to a package to dispense beverage concentrates whereby the beverage concentrates are pressurized in the package and discharged out of the package in a small high velocity stream. Such a stream is discharged into a glass of milk or water to affect self-agitation so that a beverage suitable for consumption can be made. The '231 reference does not, in any viable way, teach, suggest, or disclose any of the important limitations set forth in the invention as claimed. Clearly, a high stream velocity concentrate being discharged out of the package is not a beverage within a pressure resistant container whereby the beverage in the pressure resistant container can be dispensed into the mouth of a consumer

directly and in an effervescent form. The beverage concentrate (not beverage ready for consumption) described in the '231 reference is dispensed with such velocity that it actually results in self-agitation when dispensed into a glass of water or milk (please see Fig. 1 of the '231 reference and column 4, lines 19-24). Directly dispensing such a concentrate at high velocity into a consumer's mouth would cause choking.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in a single prior art reference, namely the '231 reference. In view of this, it is clear that the rejection made under 35 USC §102(b) is improper and should be withdrawn and rendered moot.

II. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-5, 7, 11, 12 and 14 under 35 USC §102(b) as being anticipated by Goldsmith, U.S. Patent No. 5,143,390 (hereinafter '390). In the rejection, the Examiner mentions, in summary, that claims 1-5, 7, 11 and 12 are anticipated by column 5, lines 22-34 and column 6, line 42 to column 7, line 23. Also, regarding claim 14, the Examiner concludes that the '390 reference must have a composition that is smooth and silky since it teaches that the gas employed comprises pressurized air.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless beverage product that is pressurized wherein the same can be dispensed directly into the mouth of a consumer in an effervescent manner.

The dependent claims further define the independent claim, by claiming, among other things, the type of gas employed, pressure, the amount of chlorine present, the fact that the beverage is liquid continuous and that the beverage can be water continuous.

In contrast, the '390 reference discloses a pressurization apparatus for bicycle mounted accessories. The apparatus has a pressure chamber which is formed interiorly within one of more of the hollow tubular members of a cycle frame. In the '390 reference, a flexible member 60 is moveably disposed in a chamber 46 in the body 44 wherein the expandable, flexible member 60 has a general bag-like shape so as to form a hollow expandable chamber 62.

In contrast, the present invention is directed to a pressurized beverage product suitable to dispense an effervescent beverage to a consumer. The product of the claimed invention is bagless (clearly supported, among other places, by Figure 1 of the specification as originally filed). Thus, all of the important limitations set forth in the claims, as amended, are not disclosed or suggested in the '390 reference. Therefore, Applicants respectfully submit that the novelty rejection be withdrawn and rendered moot.

III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 2, 5, 7, 10, 11, 12 and 14 under 35 USC §102(b) as being anticipated by Ash, U.S. Patent No. 3,063,841 (hereinafter '841). In the rejection, the Examiner mentions, in summary, that the claims are anticipated by column 1, line 60 to column 2, line 2, and column 2, lines 22-70, and column 3, lines 17-21. As to claim 14, the Examiner believes that the '841 reference teaches that gas comprises nitrogen and carbon dioxide, and therefore, the composition described in the same is smooth and silky.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless and pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer.

In contrast, the '841 reference is directed to a method for dispensing liquids under pressure into a drinking vessel so as to ensure a fine, regular and enduring head on the beverage going into the vessel. There is no teaching whatsoever in the '841 reference that suggests that the method of dispensing is geared towards dispensing an effervescent beverage directly into the mouth of a consumer. The '842 reference discloses a dispensing apparatus that is similar to a faucet in a conventional household sink. Taking a drink directly from a household sink would be equivalent to taking a drink directly from the apparatus described in the '841 reference. Again, the present

invention is directed to a pressurized beverage product that is suitable to dispense a beverage in effervescent form directly into the mouth of a consumer.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single prior art reference, namely the '841 reference. In view of this, it is clear that the rejection made under 35 USC §102(b) is improper and should be withdrawn.

IV. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 2, 5, 7, 11, 12 and 14 under 35 USC §102(b) as being anticipated by Kahan, U.S. Patent No. 3,119,695 (hereinafter '695). In the rejection, the Examiner mentions, in summary, that the claims are anticipated by column 3, line 20 to column 4, line 3, column 5, lines 25-30 and column 7, lines 16-47, and column 8, lines 24-45, as well as Figures 1-3. As to claim 14, the Examiner believes that the '695 reference describes a gas with nitrogen, and therefore, any liquid present would be smooth and silky.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless and pressurized beverage product wherein the same is suitable to dispense an effervescent beverage directly into the mouth of a consumer.

In contrast, the '695 reference is merely directed to packaging for liquid instant coffee concentrate. The package is suitable to dispense a teaspoon of concentrate for individual servings of coffee. Such individual teaspoons of concentrate are dispensed without any air, oxygen, dust, bacteria or foreign substance coming into contact with the pressurized liquid instant coffee. The aerosol cans described in the '695 reference release through a dip tube coffee concentrate into a cup without requiring a measuring teaspoon. Of course, the coffee concentrate would have to be combined with a liquid, like water, in order to make a beverage ready for consumption. Such a beverage would not be effervescent since it would be prepared in a conventional coffee mug. Again, the present invention is directed to a pressurized beverage product suitable to dispense a ready-to-drink effervescent beverage into the mouth of a consumer. In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not, even remotely, found in the '695 reference. Therefore, Applicants respectfully submit that the rejection made under 35 USC §102(b) is improper and must be withdrawn.

V. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 5, 7, 11 and 12 under 35 USC §102(b) as being anticipated by Jo et al., JP Patent Abstract 01289450A (hereinafter '450). In the rejection, the Examiner mentions, in summary, the Examiner concludes that since the valve in the '450 reference can replace a spoon, it must be suitable to dispense into a mouth of a consumer.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of the consumer.

In contrast, the '450 reference is merely directed to coffee packed into aerosol containers such that coffee bean extract can be propelled out of the container by pressure created from carbon dioxide gas such that when the extract is dispensed into a cup, it can be diluted with water and ready for consumption. No teaching whatsoever in the '450 reference discloses a pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer. The beverage actually consumed in the '450 reference is not effervescent, and is not pressurized. Carbon dioxide gas is only employed to dispense coffee extract or concentrate into a mug so that the same can be diluted with water and made ready for consumption.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single prior art reference, namely the '450 reference. Thus, Applicants respectfully submit that the rejection made under 35 USC §102(b) be withdrawn and rendered moot.

VI. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1, 5, 7 and 11 under 35 USC §102(b) as being anticipated over Steinberg et al., U.S. Patent No. 3,480,185 (hereinafter '185). In the rejection, the Examiner mentions, in summary, that the claims are anticipated by column 1, lines 48 to column 2, line 2 and column 2, lines 41-45. The Examiner also concludes that claim 14 is anticipated because the '185 reference describes propellants that utilize nitrous oxide. Thus, the composition described in the '185 reference, as the Examiner understands the reference, is smooth and silky.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a bagless and pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer.

In contrast, the '185 reference merely discloses a liquid effervescent pharmaceutical composition in an aerosol package. The composition should be released from the package into water so that its solid ingredients can instantaneously dissolve to produce an orally ingestible carbonated fluid containing medication like an analgesic. The package described in the '185 reference is not meant to discharge an effervescent beverage directly into the mouth of the consumer. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not

found in a single prior art reference, namely the '185 reference. Applicants, therefore, respectfully request that the novelty rejection be withdrawn and rendered moot.

VII. Rejection Under 35 USC §103

The Examiner has rejected claim 6 under 35 USC §103 as being unpatentable over Goldsmith, U.S. Patent No. 5,143,390 (hereinafter '390). In the rejection, the Examiner mentions, in summary, that the '390 reference is silent in teaching that the beverage has less than about 0.5 ppm chlorine, and however the Examiner believes that this is known in the art. Without any prior art support, therefore, the Examiner believes that claim 6 is obvious.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of a consumer. Claim 6 which defines how much chlorine should be in the effervescent beverage, is dependent upon the independent claim.

The '390 reference is merely directed to a pressurized apparatus for a cycle whereby the apparatus requires an expandable bag. The much more efficient system claimed in the present application, as amended, is bagless. In view of this, Applicants respectfully submit that the obviousness rejection is improper and must be withdrawn.

VIII. Rejection Under 35 USC §103

The Examiner has rejected claim 9 under 35 USC §103 as being unpatentable over Fox et al., U.S. Patent No. 2,977,231 (hereinafter '231). In the rejection, the Examiner mentions, in summary, that the prior art relied on is silent with respect to the removal of pulp in the beverages described. However, the Examiner believes that the removal of pulp from the citrus fruit juice is obvious in view of the orifices described in the '231 reference.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Dependent claim 9 depends from independent claim 1 which is directed to a pressurized beverage product suitable to dispense effervescent beverage directly into the mouth of the consumer. Claim 9 further defines the invention by eliminating the presence of pulp. As already made of record, the '231 reference is merely directed to a canister for shooting concentrate into a liquid at a high velocity stream so that the desired beverage suitable for consumption can be self-agitated. If one were to take the package of the '231 reference and dispense the contents directly into the mouth, the consumer/user would most likely choke due to the velocity of the concentrate exiting the package. Moreover, the contents of the package described in the '231 reference is not suitable for direct consumption since it is meant to be diluted in a liquid like water or milk.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness since none of the important limitations set forth in the presently claimed

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness since none of the important limitations set forth in the presently claimed invention are even remotely described in the '231 reference. In view of this, Applicants respectfully submit that the 35 USC §103 rejection is improper and must be withdrawn.

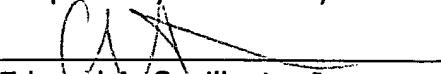
IX. Judicially Created Obviousness Type-Double Patenting Rejections

The Examiner has issued two obviousness type-double patenting rejections. The first are claims 1-9 and 11-14 in view of co-pending application 10/081,483, and claim 10 in view of the same co-pending application. While Applicants respectfully disagree, submitted herewith is a terminal disclaimer. This terminal disclaimer is being submitted so that Applicants can further business objectives and expedite the prosecution of the present patent application. In view of the above, Applicants respectfully request that the obviousness type-double patenting rejection be withdrawn and rendered moot.

Applicants herein submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions or concerns regarding the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,


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